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59-7-1. Acts constituting termination.

An agency is terminated as to every person having notice thereof in all cases by:

- (1) Expiration of its term;
- (2) Extinction of its subject;
- (3) Death of the agent;
- (4) Renunciation by the agent; or
- (5) Incapacity of the agent to act as such.

Source: CivC 1877, § 1383; CL 1887, § 4006; RCivC 1903, § 1702; RC 1919, § 1284; SDC 1939, § 3.0109 (1).

59-7-2. Termination where power of agent not coupled with an interest.

Unless the power of the agent is coupled with an interest in the subject of the agency, an agency is terminated as to every person having notice thereof by:

- (1) Revocation by the principal;
- (2) Death of the principal; or
- (3) His incapacity to contract.

Source: CivC 1877, § 1384; CL 1887, § 4007; RCivC 1903, § 1703; RC 1919, § 1285; SDC 1939, § 3.0109 (2).

59-7-2.1. Principal--Designation--Healthcare.

Notwithstanding § 59-7-2, a principal may designate another as the principal's attorney-in-fact or agent pursuant to the provisions of § [59-12-3](#).

A principal may designate any other person as the principal's attorney-in-fact or agent for health care decisions, and the attorney-in-fact shall have the authority to make any health care decision at any time during which the principal lacks capacity. Any durable power of attorney for health care shall be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney. The signature shall be witnessed by two other adult individuals or by a notary public. A power of attorney granted pursuant to this section may authorize the attorney-in-fact to consent to, to reject, or to withdraw consent for health care, including any care, service, or procedure to maintain, diagnose, or treat a person's physical or mental condition.

Source: SL 1977, ch 418, § 1; SL 1990, ch 412, § 1; SL 2012, ch 149, § 61; SL 2016, ch 120, § 34; SL 2020, ch 214, § 44.

59-7-2.2. Repealed.

Source: SL 1977, ch 418, § 2; SL 2020, ch 214, § 54.

59-7-2.3. Repealed.

Source: SL 1977, ch 418, § 3; SL 2020, ch 214, § 55.

59-7-2.4. Nomination--Health care--Guardian--Conservator.

A principal may nominate by a durable power of attorney for health care a guardian of the principal's person or conservator of the principal's estate for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney for health care. Except for good cause shown or disqualification, the court shall make an appointment under this section in accordance with the principal's most recent nomination.

Source: SL 1977, ch 418, § 4; SL 1993, ch 213, § 261; SL 2020, ch 214, § 45.

59-7-2.5. Health care decisions by agent.

The attorney-in-fact or agent may make any health care decisions for the principal which the principal could make individually if the principal had decisional capacity. However, all such decisions shall be made in accordance with accepted medical standards. Whenever making any health care decision for the principal, the attorney-in-fact or agent shall consider the recommendation of the attending physician, the decision that the principal would have made if the principal then had decisional capacity, if known, and the decision that would be in the best interest of the principal.

Source: SL 1990, ch 412, § 2; SL 2007, ch 296, § 1.

59-7-2.6. Physician's determination of principal's decisional capacity.

The attorney-in-fact or agent may not make a health care decision in any situation in which the principal's attending physician has determined in good faith that the principal has decisional capacity. The attending physician shall proceed as if there were no designation if the attorney-in-fact or agent is unavailable or refuses to make a health care decision.

Source: SL 1990, ch 412, § 3.

59-7-2.7. Comfort care required--Conditions for withdrawal of artificial nutrition or hydration.

The attorney-in-fact or agent may not authorize the withholding or withdrawal of comfort care from the principal. The attorney-in-fact or agent may authorize that artificial nutrition or hydration be withheld or withdrawn if one or more of the following exist:

- (1) Artificial nutrition or hydration is not needed for comfort care or the relief of pain and the attending physician reasonably believes that the principal's death is imminent; or
- (2) Artificial nutrition or hydration cannot be physically assimilated by the principal; or
- (3) The burden of providing artificial nutrition or hydration outweighs its benefit, provided that the determination of burden refers to the provision of artificial nutrition or hydration itself and not to the quality of the continued life of the principal; or
- (4) There is clear and convincing evidence that the principal expressed the desire that artificial nutrition or hydration be withheld, or refused artificial nutrition or hydration prior to the loss of decisional capacity; or
- (5) The principal expressed in the document creating the power of attorney that artificial nutrition or hydration be withheld; or
- (6) The principal expressly authorized, in the writing creating the power of attorney, the attorney-in-fact or agent to direct the withholding of artificial nutrition or hydration.

Source: SL 1990, ch 412, § 4; SL 2007, ch 296, § 2.

59-7-2.8. Artificial nutrition and hydration for pregnant woman--Certification by physicians.

Notwithstanding the designation of a health care attorney-in-fact or agent, life-sustaining treatment and artificial nutrition and hydration shall be provided to a pregnant woman unless, to a reasonable degree of medical certainty, as certified on the woman's medical chart by the attending physician and one other physician who has examined the woman, such procedures will not maintain the woman in such a way as to permit the continuing development and live birth of the unborn child or will be physically harmful to the woman or prolong severe pain which cannot be alleviated by medication.

Source: SL 1990, ch 412, § 5.

59-7-3. Repealed.

Source: SL 1945, ch 181, § 1; SDC Supp 1960, § 3.0110; SL 1977, ch 418, § 5; SL 2020, ch 214, § 56.

59-7-4. Repealed.

Source: SL 1945, ch 181, § 2; SDC Supp 1960, § 3.0111; SL 1977, ch 418, § 6; SL 2020, ch 214, § 57.

59-7-5. Repealed.

Source: SL 1945, ch 181, § 3; SDC Supp 1960, § 3.0112; SL 2020, ch 214, § 58.

59-7-6. Repealed.

Source: SL 1945, ch 181, § 4; SDC Supp 1960, § 3.0113; SL 2020, ch 214, § 59.

59-7-7. Repealed.

Source: SL 1945, ch 181, § 5; SDC Supp 1960, § 3.0114; SL 2020, ch 214, § 60.

59-7-8. Immunity.

A physician or other health care provider as defined in subdivision [34-12C-1](#)(5) acting in reliance on a health care decision by an attorney-in-fact or agent whom the physician or health care provider believes in good faith is authorized by this chapter to make a health care decision for the principal or a physician or other health care provider declining to act in reliance on a health care decision by an attorney-in-fact or agent whom the physician or health care provider believes in good faith is not authorized by this chapter to make a health care decision for the principal is not subject to criminal prosecution, civil liability, or professional disciplinary action on the ground that the attorney-in-fact or agent either had or did not have authority to make a health care decision or for disclosing to the attorney-in-fact or agent medical records or other information.

A physician or other health care provider who in good faith believes that the principal has or does not have decisional capacity under § [59-7-2.6](#) is not subject to criminal prosecution, civil liability, or professional disciplinary action for making that determination.

A physician or other health care provider who in good faith makes a determination in a writing or other record that a principal is incapacitated as defined in § [59-12-1](#) is not subject to criminal prosecution, civil liability, or professional disciplinary action for making that determination.

An attorney, judge, or governmental official who in good faith makes a determination in a writing or other record that a principal is incapacitated within the meaning of § [59-12-1](#) is not subject to criminal prosecution, civil liability, or professional disciplinary action for making that determination.

Source: SL 1992, ch 359; SL 2007, ch 296, § 3; SL 2020, ch 214, § 51.

59-7-9. Acts pursuant to durable power of attorney--Absent termination provision, authority not affected by time lapse since execution of instrument.

All acts done by an agent pursuant to a durable power of attorney have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if done by the principal. Unless the instrument states a time of termination, the authority of the agent is exercisable notwithstanding the lapse of time since the execution of the instrument.

Source: SL 2004, ch 312, § 1.

59-7-10. Repealed.

Source: SL 2016, ch 120, § 35; SL 2020, ch 214, § 61.

59-7-11. Appointment of guardian terminates power of attorney.

If, after a principal executes a power of attorney for health care pursuant to § [59-7-2.1](#), a court appoints a guardian of the principal's person, the power of attorney is terminated at the time of the appointment, but the guardian shall follow any provisions contained in the power of attorney for health care delineating the principal's wishes for medical and end-of-life care.

Source: SL 2016, ch 120, § 36.